

G. OWEN HAM)	
)	
Claimant-Respondent)	
)	
v.)	
)	
INGALLS SHIPBUILDING,)	DATE ISSUED:
INCORPORATED)	
)	
Self-Insured)	
Employer-Petitioner)	DECISION and ORDER

Appeal of the Supplemental Decision and Order Awarding Attorney Fees of Richard D. Mills, Administrative Law Judge, United States Department of Labor.

Mitchell G. Lattof, Sr. (Lattof & Lattof, P.C.), Mobile, Alabama, for claimant.

Traci M. Castille (Franke, Rainey & Salloum), Gulfport, Mississippi, for self-insured employer.

Before: HALL, Chief Administrative Appeals Judge, SMITH and DOLDER, Administrative Appeals Judges.

PER CURIAM:

Employer appeals the Supplemental Decision and Order Awarding Attorney Fees (94-LHC-2434) of Administrative Law Judge Richard D. Mills rendered on a claim filed pursuant to the provisions of the Longshore and Harbor Workers' Compensation Act, as amended, 33 U.S.C. §901 *et seq.* (the Act). The amount of an attorney's fee award is discretionary and may be set aside only if the challenging party shows it to be arbitrary, capricious, an abuse of discretion, or not in accordance with law. *See, e.g., Muscella v. Sun Shipbuilding & Dry Dock Co.*, 12 BRBS 272 (1980).

Claimant sought benefits under the Act for a noise-induced work-related hearing loss. A hearing was held on April 10, 1996, wherein the parties disputed the issues of average weekly wage, interest, and claimant's counsel's attorney's fee. In his Decision and Order, the administrative law judge accepted claimant's calculation in determining the applicable average weekly wage and awarded interest commencing on the date of

employer's knowledge of claimant's injury.

Thereafter, claimant's counsel submitted a fee petition to the administrative law judge requesting an attorney's fee of \$1,847.50, representing 9 hours of services performed at \$165 per hour by lead counsel, and 2.9 hours of services performed at \$125 per hour by associate counsel, in connection with this claim. Employer filed objections to the fee requested. In a Supplemental Decision and Order, the administrative law judge, after considering each of the objections raised by employer, reduced the number of hours sought by lead counsel to 7.95, reduced the hourly rate sought by lead counsel to \$135, and thereafter awarded claimant's counsel an attorney's fee of \$1,435.75. On appeal, employer challenges the administrative law judge's fee award, incorporating by reference the objections it made below into its appellate brief. Claimant responds, urging affirmance of the fee award.

Employer avers that, since claimant obtained only a nominal gain in benefits, the attorney's fee awarded should be limited in accordance with *Hensley v. Eckerhart*, 461 U.S. 424 (1983), and *George Hyman Construction Co. v. Brooks*, 963 F.2d 1532, 25 BRBS 161 (CRT) (D.C. Cir. 1992). Initially, we note that claimant obtained additional compensation as a result of the administrative law judge's decision to accept claimant's average weekly wage calculation over the calculation utilized by employer. In the instant case, the administrative law judge specifically found, in addressing employer's objections in which it cited, *inter alia*, the Supreme Court's decision in *Hensley*, that the limited gain achieved by claimant had been one of the factors which he had considered when reducing the hourly rate requested by counsel. See Supplemental Decision and Order at 1. Thus, inasmuch as the administrative law judge considered this specific objection when addressing counsel's fee petition, and in fact reduced counsel's hourly rate in part as a result of this objection, we reject employer's contention that the fee must be further reduced on this basis.

Employer next objects to the number of hours and hourly rates awarded by the administrative law judge. In his supplemental decision, the administrative law judge addressed each of the objections raised by employer and thereafter reduced the number of hours and the hourly rate sought by lead counsel. Employer has not shown that the administrative law judge abused his discretion in this regard. See *Ross v. Ingalls Shipbuilding, Inc.*, 29 BRBS 42 (1995); *Maddon v. Western Asbestos Co.*, 23 BRBS 55 (1989); *Cabral v. General Dynamics Corp.*, 13 BRBS 97 (1981). Accordingly, the number of hours and hourly rates awarded by the administrative law judge are affirmed.

Lastly, employer's specific objection to counsel's method of billing in minimum increments of one-quarter hour also is rejected, as the administrative law judge specifically found that counsel's fee petition conformed to the criteria set forth in the decisions of the United States Court of Appeals for the Fifth Circuit in *Ingalls Shipbuilding, Inc. v. Director, OWCP [Fairley]*, No. 89-4459 (5th Cir. July 25, 1990) and *Ingalls Shipbuilding, Inc. v. Director, OWCP [Biggs]*, 46 F.3d 66 (5th Cir. 1995)(table).

Accordingly, the administrative law judge's Supplemental Decision and Order Awarding Attorney Fees is affirmed.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

NANCY S. DOLDER
Administrative Appeals Judge